

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

JUDGMENT

S.B.Civil writ Petition No.6249/2007

Pradeep Kumar Paliwal. vs. LRs. of Mitha Lal & Anr.

Date : 3.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.H Purohit, for the petitioner.

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BY THE COURT :

Heard learned counsel for the petitioner.

The present writ petition has been filed to challenge the order of the Rent Tribunal dated 25.8.2007 by which the Rent Tribunal permitted amendment in the petition filed for seeking eviction of the petitioner/tenant.

Brief facts of the case are that the respondent's predecessor Mitha Lal filed petition under the provisions of the Rajasthan Rent Control Act, 2001 (for short 'Act of 2001') for eviction of the petitioner. Said Mitha Lal unfortunately expired during the

pendency of the eviction petition. Legal representatives Mitha Lal were impleaded as party applicants. The applicants after becoming party in the eviction proceedings submitted amendment application to incorporate ground for eviction which is need of the wife of deceased (original plaintiff).

The trial court allowed the application on the ground that since the original applicant sought eviction of the tenant for his personal necessity and that necessity includes the necessity of wife of the applicant, who is his legal representative and party in the eviction proceedings, therefore, eviction on the ground of need of wife can be claimed.

According to learned counsel for the petitioner, the proceeding before the Rent Tribunal was not a proceeding as of a suit, therefore, the application for eviction required to be decided not as a suit and the eviction petition is required to be decided as application. In the light of that background, new cause of action cannot be incorporated in the eviction proceedings in the application submitted for eviction of the tenant under the Act of 2001. It is also submitted that the Rent Tribunal presumed the need of the wife of deceased applicant within the need of deceased applicant whereas that was not the case of the original applicant himself. It is also submitted that

the present applicants if have any cause of action, then they have to file separate petition for eviction of the tenant.

I considered the submissions of learned counsel for the petitioner and perused the impugned order as well as the facts of the case.

It would be worthwhile to mention here that original applicant Mitha Lal in his original application itself pleaded that he was of the age of 86 years and living in the second floor of the house and he wants to shift to the lower portion of the house in view of his various disabilities. This fact itself was sufficient for presuming that the need was for applicant's residence and the applicant will live with his wife in the lower portion and the presumption cannot be that only the old person of 86 years alone will shift to the lower portion of the house and his wife will live in second floor. Therefore, the trial court was right in drawing inference on the basis of preponderance of probabilities on the basis of which the issues are to be decided in civil litigation.

Otherwise also, the petition under the provisions of the Act of 2001 may not be in the form of civil suit as filed in civil court and the provisions of Civil Procedure code may as such be not applicable still the

nature is not different and the amendment in eviction petition can be allowed to do justice by Rent Tribunal and there is no statutory bar against allowing the amendment in the eviction petition. In view of the above, amendment could have been allowed.

When a fresh petition can be filed by the party to the suit, then normally the suit or the petition cannot be dismissed on the ground that fresh petition or suit be filed and in that situation, normally amendments are allowed to avoid the multiplicity of the proceedings. In view of the above reasons also, after the death of the original applicant, if the cause accrued in favour of the successor or heirs or deceased for seeking same relief against the same party, then the amendment can be allowed and, therefore, that was rightly allowed by the Rent Tribunal.

Further reason is that under Article 227 of the Constitution of India, no case is made out for interference in the impugned order which has been passed within the jurisdiction of the Rent Tribunal.

In view of the above discussion, this writ petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S. Phopaliya